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Huntsman Advanced Materials Americas, Inc.
Legal Department
10003 Woodloch Forest Drive
The Woodlands, Texas 77380

In re Application of
MALHERBE et al.
U.S. Application No. 10/560,982
PCT No.: PCT/EP04/51275
Int. Filing Date: 28 June 2004
Priority Date: 30 June 2003
Attorney Docket No.: HAM 842079
For: PROCESS

DECISION ON
PETITION
UNDER
37 CFR 1.181

This decision is issued in response to applicants' "Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b)" filed 19 February 2008, which is being treated as a petition under 37 CFR 1.181 requesting withdrawal of the Notification of Abandonment mailed by the Office on 29 November 2007. No petition fee is required.

BACKGROUND

On 28 June 2004, applicants filed international application no. PCT/EP04/51275 which claimed a priority date of 30 June 2003 and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 13 January 2005. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 30 December 2005.

On 15 December 2005, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee; first preliminary amendment; and an application data sheet.

On 23 January 2007, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 29 November 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that

the application was abandoned for failure to file a response to the Notification of Missing Requirements mailed 23 January 2007 within the time period set therein.

On 19 February 2008, applicants filed the present petition. Applicants state in the present petition that the response to the Notification of Missing Requirements was previously submitted on 02 March 2007, therefore, petitioner statements will be treated as a petition to withdraw holding of abandonment under 37 CFR 1.181.

DISCUSSION

Applicants state in their present petition that a declaration and power of attorney was received at the United States Patent and Trademark Office on 06 March 2007. Section 503 of the Manual of Patent Examining Procedure under the heading "RETURN POSTCARD" states, in part:

"If a receipt of any paper filed in the Patent and Trademark Office is desired, it may be obtained by enclosing with the paper a self-addressed postcard identifying the paper. The Patent and Trademark Office will stamp the receipt date on the card and place it in the outgoing mail.

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

Here, applicants have provided a copy of their date-stamped filing receipt. The receipt identifies the application by application serial number and attorney docket number. The receipt itemizes, inter alia, an Executed Declaration. The receipt is stamped "PCT/PTO 06 March 2007" across its face. However, a review of the application file reveals that the declaration filed on 06 March 2007 is not located therein and applicant has not submitted a true copy of the declaration with the present petition. At this time, it is not appropriate for the Office to withdraw the Notification of Abandonment (Form PCT/DO/EO/909) mailed 29 November 2007 without a true copy of the declaration filed on 06 March 2007.


CONCLUSION

For the reasons discussed above, applicants' petition is DISMISSED without prejudice.

Applicants are hereby given a **TWO (2) MONTH** time period from the mail date of this Decision on Petition under 37 CFR 1.181 in order to file a proper response. A proper response must include a true copy of an acceptable declaration alleged to have been filed on 06 March 2007 together with an appropriate statement verifying that the declaration is a true copy.

Extensions of time under 37 CFR 1.136(a) are available.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in black ink, appearing to read "Anthony Smith", followed by a horizontal line.

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